

In the Matter of Impasse Arbitration Between

Keokuk Municipal Waterworks

And

Teamsters Local No. 238

Hearing:

September 25, 2002

Burlington, Iowa

Appearances:

For the Employer:

Terry D. Loesch, Attorney, Burlington, Iowa

For the Union:

Kimbra Wilson, Local 238 Business Agent, West Burlington, Iowa

Jill M. Hartley, Attorney, Milwaukee, Wisconsin

Before:

Charles E. Clark, Impartial Arbitrator

Authority:

This matter arose out of negotiations in accord with provisions of the Iowa Public Employment Relations Act, chapter 20, 1999 Code of Iowa (the Act). The Parties have been unable to agree upon the terms of three features of their collective bargaining agreement during their negotiations. In accordance with negotiated impasse procedures, the arbitrator was selected from a list provided by the Iowa Public Employment Relations Board (PERB) to conduct a hearing and issue a binding impasse arbitration award on the matters in dispute.

Both Parties and their respective witnesses appeared and had full and fair opportunity to present evidence and arguments in support of their respective positions. The hearing was recorded in accordance with PERB regulations. Parties waived the March 15 statutory deadline for issuance of the arbitrator's decision and award, and agreed to an extension of time for that purpose to thirty (30) days following the hearing. The Parties also waived mediation, in favor of proceeding immediately to arbitration, and to invest in the undersigned arbitrator the power to issue a binding decision and award under Section 22 of the Act.

ISSUES:

Wages

Insurance

Vacations

FINAL OFFERS OF THE PARTIES

**KEOKUK MUNICIPAL WATERWORKS
IMPASSE ARBITRATION FINAL OFFERS
SEPTEMBER 17, 2002**

I

WAGES

(3% wage increase)

ARTICLE 21, SECTION 3 as follows:

Section 3. The following SHALL be the minimum hourly rate of pay for the classifications designed in this Article

| | Starting July 1, 2002 |
|---|-----------------------|
| Plant Operator trainee | \$10.82 |
| Plant Operator Grade 1 | \$13.51 |
| Plant Operator Grade 2 | \$14.40 |
| Plant Operator Grade 3 | \$15.58 |
| Plant Operator Grade 4 | \$16.19 |
| Plant Maintenance Employee | \$13.51 |
| Working Lead Person | \$13.51 |
| Utility Worker | \$13.21 |
| Meter Reading and Maintenance Employee | \$13.21 |
| Utility Worker Distribution Grade 1 | \$13.39 |
| Utility Worker Distribution Grade 2 | \$13.60 |
| Utility Worker Distribution Grade 3 | \$14.40 |

Employer agrees to pay for training required to upgrade Iowa State Certification to advance grades for Plant Operators and Utility Distribution Workers. In addition, employer agrees to pay testing fees to upgrade Iowa State certification for up to three attempts and certification fees.

II
INSURANCE
ARTICLES 23 modified as follows

There shall be in effect during the term of this agreement group health insurance coverage provided by the employer for participating regular employees and their dependents as follows:

The employer will provide single coverage at no cost to the employee and shall pay the entire monthly premium for each participating regular employee's individual coverage. Employees who select spouse, child or family coverage will pay \$35.00 per month on the monthly premium for that coverage and the remaining amount shall be paid by the employer.

The Employer agrees to provide the same or improved coverage benefits for regular employees and their dependants during the term of this agreement, except for such coverage or benefits which are not offered or available in the current health insurance market and therefore cannot be obtained by the Employer, or unless the Union agrees to a change in coverage of the City of Keokuk which provides group coverage for the Employer's employees should change coverage in which event the Employer and the Union will consult one another in the selection of an alternative insurance program which shall nonetheless be paid as provided in this Agreement

III
VACATIONS

Retain current contract language in Article 16 Vacations

Current contract language in all other articles, except where date changes are necessary to conform to contract duration of July 1, 2002 through June 30, 2003.

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**TEAMSTERS LOCAL UNION 238 FINAL CONTRACT OFFER
FOR
KEOKUK MUNICIPAL WATER WORKS
SEPTEMBER 17, 2002**

ARTICLE 21

**WAGES AND EMPLOYEE CLASSIFICATIONS
2 1/2 % WAGE INCREASE**

ARTICLE 23
GROUP HEALTH INSURANCE
SAME AS CURRENT CONTRACT - 100% EMPLOYER CONTRIBUTION

ARTICLE 16
VACATIONS

SECTION 10 Upon Manager's approval, one week of vacation may be taken one day at a time.

All other articles in the contract remain the same, except where there are date changes.

BACKGROUND, FACTS AND DISCUSSION

As stated above, the Parties agreed to bypass statutory fact-finding and came directly to binding arbitration. Both Parties introduced substantial documentation of facts relied upon to meet the statutory criteria, as supporting evidence for their respective positions. Parties agreed that the Union should come forward with its evidence and arguments upon all three issues, and that the Employer then would do the same. Conceding the cost relationship between the issues of wages and insurance, it is, nevertheless, suggested that the alternative method - the presentation of facts addressed to the subject matter category relevant to each issue, in turn, by both Parties - is better calculated to focus attention upon the significance of relevant facts on all issues.

The City of Keokuk is located in the extreme southeast corner of the State of Iowa. The Municipal Waterworks is a quasi-independent agency of the City. It operates through a Board of five trustees, who are appointed by the City Council. As a quasi-independent agency it is totally revenue dependent; unlike all other City departments, it does not receive funds from taxes. There are thirteen (13) employees in the Waterworks bargaining unit. (Waterworks Ex. 1)

Counsel for the Waterworks pointed out that there was a difference in the contract language, itself, not addressed by the Union in its presentation. Under the current contract provision (Article 23) "the employer agrees to provide the same or improved coverage benefits for regular employees and their dependents during the term of this agreement, (*) unless the Union agrees to a change in coverage or the City of Keokuk, which provides group coverage for the Employer's employees should change coverage, in which event the Employer and the Union will consult with one another in the selection of an alternative insurance program which shall nonetheless be paid as provided in this agreement."

The Waterworks proposal included a change in that language. Where the parenthetical asterisk (*) appears in the quoted current contract language, above, the following language would be inserted as a separate, modifying clause: "except for such coverage or benefits which are not offered or available in the current health insurance market and therefore cannot be obtained by the

Employer.” The Waterworks cannot control what insurance carriers may or may not offer, or what the City of Keokuk may or may not purchase. The City purchases the health insurance coverage for all City departments, including the Waterworks. The Waterworks, like all other City departments, has an employee representative on a City committee that recommends an insurance carrier - one vote out of about 15 - and merely shares in the selection. Historically, the Mayor and City Council have accepted this employee committee’s recommendations. However, the Waterworks can no longer guarantee “the same or better coverage,” because carriers no longer offer 100% no deductible, or selection of patient’s own doctor, insurance coverage. Carriers now offer diminished cost coverage on a take it or leave basis, and purchasers, such as the City of Keokuk, have no choice other than coverage offered by carriers willing to insure municipal employees..

Unlike the expired contract, in force from 1999 through June 30, 2002 {Union Ex. 3}, the Contract with three features at impasse here, is for one year. As internal comparisons, the Union’s other two contracts with the City - for the Water Pollution Control Plant {Union Ex. 4 }, and for a General group of City employees, other than Police and Fire departments {Union Ex. 5}, were introduced. Union also offered a map of Iowa, identifying location of counties {Union Ex. 6}, and a population distribution by gender of the City of Keokuk, including data for Lee County, showing where Keokuk is located {Union Ex. 7}.

The Union’s data for external comparisons begins with the city of Burlington, which is included in this group despite the marked difference in population, because the demands for water supply are comparable; this undisputed fact is due to the markedly greater industrial demand in Keokuk. The relevant data is reflected in Union Ex. 8. Union’s other selections for external comparisons are Fort Madison, in Lee County {Union Ex. 9}, Creston, in Union County {Union Ex. 10}, DeWitt, in Clinton County {Union Ex. 11}, and Newton, in Jasper County {Union Ex. 12}. Union also provided complete Teamsters’ contracts with waterworks in Burlington {Union Ex. 13} and Fort Madison {Union Ex. 14}. Summary information provided by Iowa PERB is included for Creston {Union Ex. 15}, DeWitt {Union Ex. 16} and Newton {Union Ex. 17}.

The Waterworks’ data for external comparisons coincides with Union’s list on Fort Madison and the City of Keokuk, specifically identifying the Fire and Police Units, in addition to the General and Wastewater Units, offered by the Union. It differs in the selection of Mount Pleasant (population 11,066) and Washington (population 7,074), referenced as in close geographic proximity to Keokuk. Other cities listed by the Waterworks are Grinnell and Pella. Waterworks’ selection of communities for comparison was based on similarity of population, staying as close to Keokuk, geographically, as they were able. Counsel rejected the consideration of Burlington because of the disparity in population. Creston, DeWitt and Newton “are far afield,” acknowledging that Union could say the same of Grinnell and Pella. Counsel also acknowledged the difficulty in finding cities of about 12,000 people with waterworks whose employees are organized as collective bargaining units. (Waterworks Ex. 6)

The Employer submitted Waterworks Ex. 17 for its comparability group:

| | Dependent Monthly Premium | Employee Contribution | Employee Monthly Amount |
|----------------------|------------------------------|--------------------------|----------------------------|
| Fort Madison | \$ 558 | 7 % | \$ 40 |
| Mount Pleasant | \$ 743 | 40 % | \$ 297 |
| Grinnell | \$ 430 | 30 % | \$ 130 |
| Pella | \$ 450 | 7 % going to 10 % | \$ 31.50 |
| Washington | \$ 554 | 33.5 % | \$ 185 |
| City of Keokuk Units | | | |
| General | \$ 487 | 12.5 % | \$ 61 |
| Wastewater | \$ 487 | 12.5% | \$ 61 |
| Police | \$ 487 | 10 % | \$ 49 |
| Fire | \$ 487 | 10% | \$ 49 |
| Waterworks | \$ 487 | 0 | 0 |

In support of its position on Wages, the Waterworks offered an Income Statement Summary covering the six Fiscal Years Ending 06/30/1998 through 06/30/03. Data for the first four is Actual, that for FYE '02 is Unaudited, and that for FYE '03 is Projected. It demonstrates that the Waterworks operating position, particularly its Operating Cash, is declining. Entries for Operating Cash are highlighted, showing a steady decline from \$671,551 to \$243,046, despite a rate increase in January, 2000. (Waterworks Ex. 7)

General Manager Bill Cole noted the economic decline of the nation, stating that Keokuk is particularly hard hit because it is severely industrialized; about 80% of the Waterworks water supply goes to local industry, whereas most cities would be fortunate to be 30% industrialized. Keokuk industries are sensitive to rate increases. He meets with industries to ascertain how rate increases will impact their operations, and - despite optimism about the future - the present situation is the worst he's seen in Keokuk. Industry representatives challenge him to explain what Waterworks Management is doing to control costs. The 100% payment for employees' medical coverage has been specifically identified by industry representatives as being at variance with the practice in private industry. That coverage was approved by a former manager, who did not foresee the rise in costs, nor that with 100% coverage working family members of Waterworks employees would move to Waterworks family plan from less favorable coverages where employed.. Cole opined that the \$35.00 per month employee co-pay toward an \$800.00 per month family premium, as proposed, was not unreasonable. Counsel pointed out that requesting minimal relief in a dollar amount was less antagonistic towards labor than a percentage proposal because the latter would increase uncontrollably with every insurance premium increase.

Being totally dependent on revenue means all costs must be met with revenue; all debt service, all salaries, as well as wages and benefits to employees in the bargaining unit must be paid out of revenue. Privatization of waterworks is a big issue throughout the nation, and Waterworks has been approached by American Industries to privatize. Bill Cole has told

employees that if the Waterworks does not operate as efficiently as possible privatization can become a viable option. If America Industries can come in and provide cheaper water, local industries will force the issue, because they want cheap water.

Despite a 15% rate increase in 2000, operating expenses are exceeding revenues. This is shown by the negative Net Income figures on Waterworks Ex. 7. Referring to the highlighted Operating Cash line of this Exhibit, Cole pointed out that Operating Cash dropped \$208,000.00 last year and an estimated \$115,000.00 drop this year, for a total of \$ 323,000.00, which was partly based on loss of businesses in Keokuk. Two businesses were named as having moved away, cutting revenue. Very little savings - from costs of electricity and chemicals - are realized by producing eight million gallons per day compared to 12 million gallons per day, because of fixed costs of manpower and debt service. The diminishing revenues from a declining industrial base are responsible for this critical situation, which has occurred despite a 70% increase in water rates in the last seven years. Exhibit 7 shows there was a rate increase in January 2000.

Waterworks Exhibit 8, Average Wage Increase History is a tabular demonstration of both Wages and Insurance cost data. The Hourly Pay Rate is expressed in terms of average, not actual, rates of pay for 14 dates from July 1990 through July 2001. Employer Family Insurance Costs (only) for 15 dates from January 1990 through October 2002, are listed in dollars and in Annual Percentage Increases. Dates for Pay and Insurance do not correspond. Entries for Wages show 3% increases in Average Wages in 1991 and 1992, in which years the Employer paid only 75% of Insurance Costs; employees co-pay was 25%. In July 1993 the Average Hourly Rate was \$10.18, and there was no increase in Wages; as of July 1993 the Waterworks first paid 100% of Insurance Costs. Annual Family Insurance Cost was \$413.57, a 2% Annual Increase from the October 1992 premium.

Increases of 3% in the Average Hourly Pay Rate appear for the July dates in 1994, 1995, 1996, 2000 and 2001, when the dollar figure was \$13.98. Because of the impact of State Certification requirements, significant changes were made in the Parties' contract, notably in grade structure modifications, which resulted in greater percentage increases in the other years: 6% in 1997, 5% in 1998, and 7% in 1999. Many employees were then able to gain increases because of Certification or creation of additional grades, with corresponding modifications of pay structure. Certification of all Water Operators is required by Iowa State law, and surface Water Operators are required to be a minimum Grade 2 within three years, and if not certified within that time period are no longer permitted work in that capacity. In Water Distribution, however, only the supervisor must be certified, but Waterworks has allowed all employees to become certified.

Union confirmed that, since 1993 the bargaining unit employees have had their health insurance premiums fully paid by the Employer for single employees and employees with family and dependents, alike. To gain this benefit the employees in 1993 took a wage freeze in exchange. Waterworks Counsel pointed out that Union had opposed that change, but that "somehow" it got into the contract. Prior to 1993 the employees had made a 25 % contribution -- or co-pay -- towards premiums. The 1993 contract was a one-year contract, but the same

practice of 100% payment of health insurance premiums by the Employer has been incorporated in every successive contract between these Parties. Union's bargaining position here is that this practice should be continued in the new one-year contract, and in exchange proposed only a 2 1/2 % increase in wages, rather than the 3% offered by the Employer.

Other City of Keokuk employees have received a 3% increase in wages in their contracts. Keokuk Water Pollution employees with families and dependents pay 12 1/2 % of the Group Life and Health insurance premium; single employee premiums are paid 100% by Employer (Art. 28, p. 18, Union Ex. 4). All other City of Keokuk have the same insurance cost-sharing arrangement as Water Pollution employees (Art 27, pp. 20-21, Union Ex. 5). These current contracts continue a cost-sharing practice established in prior contracts. The City of Keokuk has not treated all three bargaining units' employees the same over a period of years.

There are 13 employees in the Waterworks bargaining unit, five or six in Water Pollution, and about 27 in the General group. There are, however, a total number of 21 Waterworks staff covered by the Insurance program.

In Union's external comparable group, Burlington pays 100% of health insurance premiums for its Waterworks' employees, both single and with family (Art. 19, p.33, Union Ex. 13). Wages, which include seven steps in classification, range from an hourly low of \$9.34, rising to \$ 9.43 January 1, 2003, to a high of \$17.79, similarly rising to \$ 17.96. (Union Ex. 13, Schedules A & B). In Fort Madison, employees pay \$40.00 per month for family coverage. (Art. 18, p. 17, Union Ex. 14). Wages, which include three steps in classification, range from an hourly low of \$ 10.12 to a high of \$ 15.18 (Union Ex. 14, p.24) In Creston, employees pay \$10.24 per month towards coverage of dependents. Wages are \$13.00 per hour for two job classifications. (Union Ex. 15). The City of DeWitt pays 100% for single and family coverage. Wages range from an hourly low of \$13.66 to a high of \$ 16.32. (Union Ex. 16). The City of Newton, similarly, pays 100% of the premiums for single and family coverage of employees. Wages are stated as "4 years to top," with July 1, 2000 low of \$ 12.44 to high of \$ 16.93, all to be adjusted "3-6 % ATB/CPI both on July 1, 2001, and July 1, 2002. (Union Ex. 17).

Employees at the Keokuk Waterworks have varying degrees of health insurance coverage because they have varying circumstances. Some employees are divorced with children, some live alone, some have family dependents - without or with children, as well. Employees Union Steward Pat Rector opined that the Waterworks could identify the number and pay classification of employees in each health insurance plan category - - employee and child, employee and spouse, single plan and family plan. City of Keokuk employees other than the Waterworks employees are better able to bear the burden of the co-pay in their contracts because their contracts provide benefits - including an extra week's vacation - not included in the Waterworks; they receive longevity pay, an increment of compensation which is not provided to Waterworks employees. They are better able to bear the costs of co-pay.

Rector estimated that, based on rate of pay on the City pay scales, employees receiving

longevity pay with service of from 12 to 16 years on City's payrolls receive sufficient longevity pay to cover the total amount of their co-pay for health insurance. Three Waterworks employees have 10 years, two others have 29 and 22 years, respectively, one employee has 31 years service, one has 11 years and another has 14 years service. The junior employee in the group with which the witness was familiar was the witness, himself, with 10 years service. Waterworks employees in other groups had less seniority.

Waterworks Exhibit 18 does provide part of the information to which Rector alluded, the number of employees covered in each of the four health insurance plan categories, and the impact of its Final Offer in dollars:

| Number of Employees | Category | Monthly Cost | Annual Cost | Monthly Contrib. | Annual Contrib | Annual Wage Increase | Net Dollar Raise |
|---------------------|---------------|--------------|-------------|------------------|----------------|----------------------|------------------|
| 4 | Employee Only | \$301.27 | \$3,715.24 | \$0 | \$0 | \$873.60 | \$873.60 |
| 5 | " & Spouse | \$333.49 | \$4,001.88 | \$35.00 | \$420.99 | \$873.60 | \$453.60 |
| 1 | " & Child | \$291.68 | \$3,500.16 | \$35.00 | \$420.99 | \$873.60 | \$453.60 |
| 2 | " & Family | \$608.89 | \$7,306.68 | \$35.00 | \$420.99 | \$873.60 | \$453.60 |

Union views the items of wages and insurance as closely related because they affect one another. Varying figures are presented for the rate of inflation, from 1.8 % to 2.8 %: the highest figure was less than Management's offer of 3%, but greater than Union's offer of 2 1/2%. The benefit of fully paid health insurance for all members of the bargaining unit is a very good benefit and they want to retain this term of their employment. Management's offer of a 3% wage increase would diminish to an increase of about 1 1/2% after the resulting co-payment of premiums by the employees. If a co-payment by employees were to be initiated it probably would increase regularly in successive contract years, and employees would be worse off than they are under the present provision. Employees value the benefit of the fully paid health insurance and willingly would forego a substantial part of Management's wage proposal to retain this benefit.

Here, Union contends that the Employer has not offered a quid pro quo in their Final Offer proposal to initiate an employee co-pay. The existing 100% employer payment of premiums is a substantial employee benefit, bargained for and valued by employees. The 3% now offered by the Employer is what the salaried City employees as well as bargaining-unit employees currently receive under their contracts. Any proposal of a reduction of a benefit requires the offer of a quid pro quo, and there is none here.

Waterworks response to this argument was to point out that, while all other City employees - as well as those in its comparability group - also received a 3 % wage increase in their new contracts (Waterworks Ex. 11), all other City employees contribute to the costs of their insurance premiums. (Waterworks Ex. 17, above)

Waterworks Exhibit 11 shows that its comparability group wage increases for 2001-2002 contracts to 2002-2003 are, similarly, 3 %, except for Pella and Washington, which are for 4%.

Waterworks Exhibit 12 shows that its non-bargaining unit personnel also received a 3 % increase, except for General Manager Cole, who received no increase, on his recommendation.

Also using its comparability group, Waterworks Exhibit 10 compares Current Wages:

| | Current Wages High | Current Wages Low |
|----------------|--------------------|-------------------|
| Fort Madison | \$ 13.78 | \$ 11.98 |
| Mount Pleasant | \$ 21.04 * | \$ 13.82 |
| Grinnell | \$ 14.42 | \$ 12.07 |
| Pella | \$ 16.44 | \$ 13.94 |
| Washington | \$ 14.86 | \$ 10.95 |
| City of Keokuk | \$ 15.95 | \$ 14.21 |
| Keokuk Water | \$ 15.72 | \$ 12.83 |

* Includes electrical line personnel so wages skews to high side

Waterworks contends this shows that its Wage structure falls "right in the middle."

The Waterworks is required to participate in the health insurance program obtained by the City of Keokuk. It is unable to control premium cost increases beyond the single vote of its representative on the committee of 15. The coverage selected by the City dictates the cost impact for the Waterworks. (Waterworks Exhibit 13)

Waterworks Exhibit 14 is a tabular presentation of insurance costs and increases, stated in both dollar amounts and percentages, for every fiscal year from 1987 through June 30, 2003. The first dollar amount (1987) is \$29,602.00. The last dollar amount (2003) is \$ 170,795.00. The greatest increase (in 1991) was \$19,052.00, or 57% more than the prior year. The smallest increase (in 1998) was \$ 2,629.00, or 3 %. There have been four decreases in premiums:

- In 1988 a decrease of \$ 976.00, or 3 %;
- In 1989 a decrease of \$ 1,032.00, or 4 %;
- In 1993 a decrease of \$ 816.00, or 1 %;
- In 1997 a decrease of \$ 1,644.00, or 2 %

The increase for the current contract period (2002-2003) is \$16,104.00, or 10 %. These figures are for the Waterworks, and include non-bargaining unit personnel as well as those covered by Union contracts. Counsel stated that Waterworks has incurred a 53 % increase in insurance costs in the last five years. This is the reason Waterworks now seeks some limited sharing of costs by the employees.

Waterworks Exhibit 15 is a history of the premiums and percentages payable by identified carriers, which have changed five times since 1986, broken down as to coverages provided. The bottom line shows monthly premium costs for the four coverages, effective October 2002.

| | | | |
|-----------|-----------|-------------------|------------------|
| Single | Family | Employee & Spouse | Employee & Child |
| \$ 301.27 | \$ 910.16 | \$ 634.76 | \$ 592.95 |

Waterworks Exhibit 16 is, essentially, a restatement of Exhibit 15, relating each of these new carrier's premiums for 2002 -2003 to the former carrier's premiums for 2001-2002. The critical category, of course, is the Family coverage, which increased from \$787.30.

Waterworks Exhibit 19 states its reasons in support of its Insurance Proposal.

"1. Keokuk Waterworks is the only employer in the comparability group where there is a no employee participation in family health insurance costs.

"2. All City of Keokuk bargaining units have cost participation by employees in health insurance premium except for the Waterworks.

"3. Health insurance premiums have consistently increased in cost. City Waterworks has incurred a 53 % in total premium cost in the past five years."

Waterworks Counsel stated: "We think its time that the Waterworks get in line with the other comparability people."

Counsel also stated that, if the Waterworks Final Offer on Insurance was awarded, the likelihood was that the Waterworks Final Offer on Wages also would be awarded, "but insurance is our point of dispute here, insurance is the reason we're here."

1. - - - - -

Counsel for Waterworks stated that Exhibit 20 "may be in error," and requested Union's help in correcting his possible misunderstanding. He relied on Bill Cole's explanation of the history and circumstances of the practices regarding Vacations to explain what had occurred and Waterworks' reasons for opposing Union's final Offer Proposal.

The Vacation language proposed by Union would permit employees to take up to one week of their vacation time one day at a time, upon their manager's approval. Thus, an employee entitled to three weeks' vacation would be required to schedule two weeks time, and take the other week one day at a time, when approved. Historically, employees had taken vacations one week, or two, at a time, but not less than one week. The Employer tried following this practice with the Distribution employees in 1996, and during the intervening years similarly extended the trial to Plant employees. For the past three or four years the Plant employees have been able to

take one week of their vacation one day at a time with Management's approval. Union wants to continue this practice and formally to put that into the written agreement.

Cole explained that Union was told the practice was initiated on a trial basis, and it had been continued for several years. Union believed that a trial of the practice would have been for a much shorter period. Management had told Union it had scheduling problems, but bargaining unit members had not been aware of such problems. City employees other than Waterworks employees are allowed to break their vacation time up into one-half day vacations at a time, but then are required to take the remaining one-half day vacation before the pay period expires.

Both the Water Plant Superintendent and Distribution Superintendent advised Cole of the difficulty they would have with the practice because of the rotation schedules at the Plant and limited size of Distribution. There are only six employees in Distribution, most are senior employees, so that there is a total of four months' time to be allotted for the vacations of six employees. The Contract affords up to five weeks of Vacation, and employees also receive two Personal Days per year. Basically, scheduling begins with the fact that some one in Distribution is on Vacation one-third of the year. The trial of permitting employees to take Vacation time one day at a time was initiated despite the contrary recommendations of the two Superintendents.

Cole estimated the trial period was "three or four years." Management had never contemplated use of Vacation time as a negotiating element - i.e., "a hammer," and had notified employees of the change prior to negotiations. Cole was not certain of the time of notice, and acknowledged the possibility of error. Cole explained that his genuine concern was that he might have extended the trial period for too long and that the feature of the practice might come up as a Past Practice issue if it were continued. The Department heads had been urging Cole to discontinue the trial for the past year-and-one half. He illustrated the types of scheduling problems with the example of one employee on Vacation, a second having secured approval for one day off also on Vacation, when a third employee is absent because of illness: the Department then has only three employees. The Waterworks has had the problem of then having a break in the Distribution system, requiring Cole to hire a contractor to repair the break, along with whatever assistance a remaining employee might be able to provide.

The Water Plant presents a different problem, because it operates with a rotating 24-hour shift. It is absolutely critical that the Plant be fully manned 24 hours a day. "It really does throw a kink in things whenever a person calls in Sick after you've given another person a day off or on a week's Vacation. Then you're calling an Operator in on overtime, who may have already worked a shift, on a double shift, and they don't appreciate it. However, they do appreciate that day off at a time, and they put up with it." The Waterworks has incurred additional overtime costs in experimenting with the practice, and concluded it did not work out well for the Employer. Cole understood that it did work well for the employees, but does not understand how the City makes their system work. In general, City departments are more heavily staffed with personnel than is the Waterworks. Ultimately, he believes it is based on having the Waterworks operate as a business matter, rather than a service organization.

Counsel for Waterworks stipulated that its Exhibit 20, which represented an earlier Union proposal, is incorrect. It has not been considered as evidence in this matter.

Waterworks Exhibit 21 briefly states as propositions two points more completely stated by Cole. It adds the point that the present Vacation provision was determined by mutual agreement and should not be changed by arbitration.

Waterworks Counsel addressed the point of longevity, raised by the Union, which is an element of compensation for other City of Keokuk employees. His discussions with Management and the City Attorney, in regard to other City contracts, establish that longevity was never designed or considered to cover insurance; it was to compensate persons for long-time experience. Longevity is not an issue here.

Union Counsel re-iterated that its Vacation proposal was limited to the one-day-at-a-time option, at Management's discretion, and that the present Contract language limits only one employee will be allowed to be on vacation at any one time in any section. Union's proposal contemplates no change of that feature, which would preclude a second employee in a section going on Vacation when another employee was already on Vacation. Furthermore, as to the impact of an emergency arising when an employee is on Vacation, there is a present Contract provision permitting the Employer to cancel a Vacation in order to recall an employee on Vacation in case of emergency. These features of present Contract language adequately protect Waterworks ability to staff its operations, and Union's proposal would not change those features.

Union met Waterworks challenge to consideration of Burlington in comparability because of population disparity by pointing out that, because of Keokuk's much greater industrialization, the Waterworks output in millions of gallons of water per day is much closer to Burlington water output, than what is relative in population.

As to the lack of a quid pro quo for Waterworks Insurance proposal, acknowledging that other City employees contribute to premium costs, Union notes that Waterworks 3 % Wage Proposal is identical with what was given employees under other City contracts, simply as a matter of Wages. Going back at least to 2001, Wage increases in Teamster contracts with City's other bargaining units have been comparable to Waterworks Wage increases. There is no quid pro quo for this bargaining unit in the 3 % Wage raise for Waterworks Insurance proposal.

Union recognized the longevity increments are compensation for extended tenure of service, but notes that it is an additional benefit, the absence of which in the Waterworks Contract enhances the value to employees of the benefit of fully paid health insurance.

Union contended that, regarding its Vacation proposal, the situation illustrated by Cole could not arise, because a second Vacation of one day at a time would not be approved in any Department where one employee already was on Vacation. Cole responded by explaining that Union viewed Meter Reading - consisting of two meter readers and a technician - and Distribution

- consisting of a crew of three people, each, as departments, in addition to the Plant. Each of these two departments of three people is allowed to have one person on Vacation, "so you're immediately down to four people. If a person calls in sick, you're down to three people, and if another person has a funeral problem, or something, you're down to two people. What aggravates the problem is the longevity of the people in the department and the five weeks of Vacation they've accumulated, and then the third department is the Plant itself, consisting of six or seven people, and they're on a rotating shift. That does not have the extra person to fill in."

DECISION.

It may be an appropriate predicate to note that these Parties agreed to present the merits of their proposals in a totally informal manner, more in keeping with a collective bargaining session than an arbitration hearing. It was agreed that the Union would first present its evidence to support its proposals, followed by the Employer's presentation, without separation of data by subject-matter categories, supported by Exhibits prepared prior to hearing, and relying upon statements and arguments of Counsel and witnesses alike. No oaths were administered.

The collective bargaining history of the Parties, together with their past contracts, presents significant considerations. While Union repeatedly referred to the fully paid health Insurance feature as "bargained," the Employer's Counsel's recitation of its history was not contradicted. It was that the Union opposed the bargain of fully paid health Insurance in exchange for no Wage increase in 1993; but that "somehow it got into the contract." That statement does not directly contradict Union's claim that it was bargained, even though no explanation for an apparent change of position at the table. Neither Party suggested that the 100% payment of premiums by the Waterworks got into the contract as the result of an arbitration award, which most probably would have been a readily available record. It also merits note that, prior to bargaining that year's contract, Waterworks employee's had paid 25 % of the premiums. Contracts of record for other City bargaining units show that covered employees in those units pay no more than 12.5 % of premium costs of their health insurance under the single contract for all City employees. In view of Waterworks' proofs of the steady increase of such costs, it is highly unlikely that any City employee received a reduction in the percentages of their co-pays. It would appear that Waterworks' acknowledgment that "The City of Keokuk has not treated all three bargaining units' employees the same over a period of years," (p. 8, above) is a masterpiece of understatement.

The Employer's Exhibit 8 shows that the Employer realized economic gain from the 1993 bargain, insofar as it reveals a 6 % reduction of premium cost in October 1994, of which a 1 % saving from the October 1993 costs continued until January 1997.

The selection of Burlington as an appropriate community for the purposes of comparison of Wages paid and Insurance coverage afforded employees doing comparable work is warranted.

Bill Cole pointed out the remarkably high percentage of industrial water consumption in Keokuk. The fact that Keokuk Waterworks employees pump and distribute a comparable amount of water, despite the difference in population, was not contradicted.. Wages and Insurance are terms and conditions of employment given employees in exchange for work done. It is immaterial to such considerations that the same work product may be put to different uses, in the absence of a showing to the contrary.

Burlington pays 100 % of the health insurance premium for its waterworks employees and their dependents, together with fully paid premiums for like coverage of dental care, and a paid up life insurance policy of \$ 5,000.00. As in Keokuk, this is provided under Insurance purchased by the City, for all City employees. (Union Ex. 13, p. 33) Burlington has a seven-step by classification Wage schedule, whereby employees gain their respective top step after six years. Effective July 1, 2002, Operators receive an hourly rate of \$16.68, Maintenance gets \$ 16.90, and Head Maintenance \$ 17.79. (Union Ex. 13, p. 41) Use of the top step for comparison is justified by Rector's explanation that he is the junior Plant employee, with 10 years' seniority.

Fort Madison has a provision similar to Waterworks' Final Offer, with fully paid Insurance premiums paid only for the employee, who incurs a \$40.00 monthly co-pay for dependent's coverage, but also provides a fully paid \$13,000.00 life insurance policy. (Union Ex. 14, p.17) Hourly Wage rates are \$ 13.78 for Operator/Maintenance, \$ 15.18 (#1) \$ 13.59 for Distribution, \$ 13.27 for Meter Reader, and longevity pay beginning after five years. (Union Ex. 14, pp. 24, 18)

Creston also has a similar Insurance plan, with employee monthly co-pays of \$1.14 single and \$10.24 dependent, and provides a \$20,000.00 life policy. Hourly Wages are \$13.00.(Union Ex. 14)

DeWitt pays 100% of the health Insurance premium for employees and family, together with \$20,000.00 life and and additional \$20,000.00 AD&D. Wages in 2001 ranged from \$13.66 to \$16.32 hourly, supplemented with longevity increments of \$6.00 per month for each month over 24 months, and a clothing allowance. (Union Ex. 16)

Newton also pays 100 % of the health Insurance premium for employees and family. Together with fully paid dental for employees and family, and \$20,000.00 life. Wages cannot be compared in the absence of data relating to entries of ATB/CPI increasing from 3- 6% in 1991 and 2002 the rate given for 2000.

Clearly, the current Waterworks Insurance provision for fully paid health premiums for employees and dependents is not out of line with other Iowa cities. And, because of inclusion of the variety of additional benefits, such as dental coverage and longevity increments, the comparison of Wages indicates the need for Waterworks' proposal on Wages.

The Waterworks' selections of cities for comparison appears to have been made on the

basis of population, alone. That being true, the selection of Washington, with only 57% of the population of Keokuk, appears without merit, in the absence of a showing of what relevance its proximity to the City of Keokuk might have.

Keokuk Water Pollution Plant employees continue to pay 12.5 % of Insurance premiums under their contract (Union Ex. 4, p.18). This is also true of employees covered by the General contract (Union Ex. 5, pp.20-32) However, a comparison of Wages with those of Waterworks' employees shows that both receive longevity pay increments added to their base pay, beginning with the fifth year of employment, which Waterworks employees do not. Union's proofs show that even the most junior Waterworks' Plant employee would be entitled to two longevity step increments added to his Wages if the same benefit feature was included in the Parties' contract. The absence of a similar provision in their contract clearly was shown to be a matter of concern to Waterworks employees.

Absent proofs of skills, or skill levels, efforts to compare Wages of General contract employees with Wages of Waterworks employees, considering the work probably being done under the general contract, would appear to be comparing apples with oranges. However, comparison of apparently similar jobs in the Water Pollution Plant with those of Waterworks employees seems appropriate and reflects a marked disparity in favor of all categories of Pollution Plant employees. (Union Ex. 4, p.16, Waterworks Final Offer, p.2, above)

| <u>Water Pollution</u> | <u>Plant</u> | <u>Waterworks</u> |
|------------------------|------------------|-------------------|
| \$ 14.21 | Operator Trainee | \$ 10.82 |
| \$ 14.78 | Operator Grade 1 | \$ 13.51 |
| \$ 15.37 | Operator Grade 2 | \$ 14.40 |
| \$ 15.95 | Operator Grade 3 | \$ 15.58 |
| None | Operator Grade 4 | \$ 16.19 |
| \$ 15.95 | Maintenance | \$ 13.51 |

In the light of the bargaining history showing that only the Waterworks employees were denied a 3 % increase in 1993, it seems warranted to ascribe this disparity, in some significant part, to the bargain Union struck in 1993.

On this record, it seems clear that the most reasonable offer on Wages is the Waterworks Final Offer. Taking into account the stability of the employment relation and relevant employee morale, that offer alone avoids the hazards attendant upon Waterworks employees' Wages falling further behind wages of other Keokuk City employees.

Turning to Insurance, Waterworks' Counsel wisely observed the fact that similar objections could be leveled to both Parties' selections of remote communities. It seems there is little to be gained from an item by item comparison of Parties' differing selections other than the fact, recognized by Union's selections, that some cities, like Keokuk, do pay 100 % of premiums for health Insurance, and others do not. Neither Party proved a trend in either direction. Neither

Party's Final Offer on Insurance is unreasonable on its face, although most other cities provide some additional related employee benefits, whether health insurance is fully paid or not.

Bill Cole's detailing of the interest of industry in maintaining their ability to get cheap water and reported comments favoring institution of employee contributions toward payment of rising Insurance costs lend support to Waterworks argument. So, too, his identification of industrial consumers that have left Keokuk. It is difficult to measure the force of his observations regarding the suggestions of privatization of the business of providing water to the city. Such an evaluation would require far more data about the City of Keokuk management and operations than was offered here. Any move towards privatization would necessarily involve participation of the City Council, and there was no suggestion of any attitude or interest on the part of that body. It cannot be considered a significant support for Waterworks' proposal absent such evidence.

Similarly, Cole's statements regarding his approved recommendation that he not receive any increase in salary for 2002-2003 cannot be given weight as support for Waterworks' proposal in the absence of full disclosure of the terms and conditions of his employment. Such statements may have been persuasive in his discussions with industrialists, but lack such force here..

Waterworks Exhibits 7, 8, 14, 15 and 16 must be carefully considered to determine whether its Final Offer on Insurance is more reasonable than Union's Final Offer, which is to retain the current provision. Two threshold points need be stated. The language change explained at some length (pp. 4-5, above) need not be considered as an essential factor in resolving the question, insofar as the Waterworks' lack of control in City's selection of a carrier is well known to Union and employees, alike, and whether or not any carrier offers a particular coverage is a matter considered by the City's Committee in its selection of the carrier.

These Exhibits show the continuing trend of rising insurance costs, despite occasional reductions in premiums on several occasions, and show the even more steady decline in Waterworks' Operating Cash, even though Income has both increased and decreased when rates were unchanged. Income increased when rates were increased. The exhibit indicates that these divergent trends result from steadily increasing Operating Expenses, and Bond Payments which fluctuate up and down from year to year, as well as equal annual payments "To City..". No explanation of these reductions of Income were offered. Similarly, no explanation was offered regarding the two further deductions - Capitol Expenses and Depreciation - both of which likewise fluctuate up and down from year to year, to yield a bottom line, Net Income, which reflects a negative number for each of the six reported Fiscal Years, 1998 through 2003. (Waterworks Exhibit 7) Those numbers are:

(3,852,474.00) (1,685,945.00) (1,758,234.00) (625,974.00) (849,119.00) (1,106,954.00)

If each of these negative income figures means it represents an annual loss, they add up to a total loss of \$ 9,878,700.00. If, as Waterworks repeatedly stated, it operates as a business and does not receive tax dollars, such demonstration of the loss of almost 10 million dollars in six

years, despite a substantial increase in rates, cries out for an explanation. How can it continue to do business? How can the City Council justify permitting continued operations? It does continue to operate, and, in fact, projected a 78% greater Capitol Expense in FY2003 than that in 2002. It can only be inferred that a far more complete accounting must regularly be made to the City Council, but neither Balance Sheet nor Budget was presented here. In the absence of a full accounting, such as the Keokuk City Council would require, it would be unreasonable to rely upon this information alone, to select Waterworks' Final Offer as more reasonable.

Furthermore, and mindful of the magnitude of these figures, as well as that of the new carrier's increased premiums, a calculation of the total sum of the contributions of the eight employees who would be required to do so immediately would yield \$ 38,122.92 (Waterworks Exhibit 18), or 22 % of the projected premium of \$ 170,795.00. (Waterworks Ex. 14) This indicates that the Employer is motivated as much by a purpose to establish a practice of employee co-pay as sharing the costs.

That consideration, in turn, prompts further consideration of the bargaining history, including that for the new Contract. This record reflects seriously different treatment of Waterworks employees when compared with other Keokuk City employees. Since 1993 Waterworks employees have had a lower Wage range for all positions than employees in other departments. They have not had longevity pay similar to that of employees in other departments. This fact is relevant both in regard to Waterworks' employees' ability to absorb the diminution of the Wage increase by the amount of their co-pay, and for the effect upon their morale as a factor in maintaining workplace stability.

Finally, there is Union's argument that there is no quid pro quo. The argument exaggerates the real difficulty; the Waterworks proposal lacks an adequate quid pro quo.

Union's evaluation of the diminution of Waterworks' Wage proposal at 1 1/2 % comes close to the mark, but that is not the present measure of the quid pro quo. West Des Moines Education Association v. PERB, 266 N.W. 2d 118 (Iowa 1978) established that measure in final offer arbitration as to Wages as the difference between the two Parties' Final Offers. Having taken their impasse to arbitration, the risk is that the other party's final offer will be selected. The arbitrator is limited by Iowa State law to the selection of one or the other. Here that difference is 1/2 of 1 %, and by their decision to take their impasse to arbitration, the Parties here re-defined the quid pro quo. It is that difference which should be considered to compare with the 3 % Wage increase bargained by Union in 1993. On this record, the Waterworks Final Offer on Insurance did not present an adequate quid pro quo.

For all these reasons, the Union's Final Offer on Insurance is more reasonable.

Bill Cole's fully forthcoming explanation of his management of the trial modification of the Vacation provision, permitting employee's to use one week of Vacation taking one day off at a time, as has been the practice in other City departments, was both commendable and persuasive.

He acknowledged, as the arbitrator fully understood, the risk he had run by not terminating the trial at an earlier date. Had the Union had occasion to file a grievance raising the issue at the time Cole acted to end the trial, and before he acted, the grievance might well have been sustained on full proof of Past Practice. See Elkouri & Elkouri, How Arbitration Works, p. 437, et seq. (4th ed. 1985). His action put Union on notice that the trial had ended, and that notice was sufficient to preclude the hazard of an arbitral determination finding a Past Practice modification of the Contract.

Likewise, his explanation of the problems possibly arising by reason of the combination of high seniority employees entitled to five weeks Vacation per year and the limited number of employees available in the functions of Waterworks fully answered Union's contentions. On this record, his explanation of how the lack of available employees at critical times necessitated payment of overtime or temporary retention of the services of an outside source was conclusive.

The Waterworks' Final Offer on Vacations is the most reasonable offer.

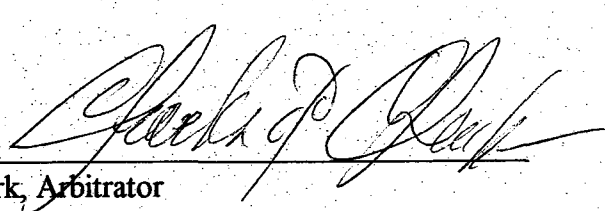
AWARD

For the reasons stated above, the following award is entered:

Wages: -- The Waterworks' Final Offer is awarded;

Insurance: -- The Union's Final Offer is awarded;

Vacations: -- The Waterworks' Final Offer is awarded.

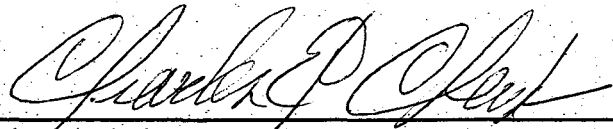

Charles E. Clark, Arbitrator

Dated this 24th day
of October, 2002

CERTIFICATE OF SERVICE

I certify that on this, the 25th day of October, 2002, I served the foregoing Award of Arbitrator upon each of the Parties to this Matter, by mailing a copy to them at their respective addresses.

I further certify that on this, the 25th day of October, 2002, I filed this Award with the Iowa PERB, 514 East Locust. Ste. 202, Des Moines, Iowa 50309, via first class U.S. mail.



Charles E. Clark, Arbitrator